

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE GREENEVILLE DIVISION

B.P., H.A., and S.H., individually, and on)
Behalf of all others similarly situated,)
)
Plaintiffs,)
)
VERSUS)
)
CITY OF JOHNSON CITY, TENNESSEE, *et al*)
)
Defendants.)

No. 2:23-cv-00071-TRM-CRW

MOTION FOR PREVAILING PARTY ATTORNEYS' FEES
BY KEVIN PETERS

COMES NOW Kevin Peters, by and through counsel, and moves the Court to award his attorneys' fees and costs against Plaintiff B.P. and Plaintiff H.A., pursuant to 42 U.S.C. § 1988(b), Fed. R. Civ. P. 54(d), and E.D. Tenn. LR 54.2, and in accordance with the Supreme Court's decision in *Christiansburg Garment Co. v. Equal Employment Opportunity Commission*, 434 U.S. 412, 422 (1978). In support of this Motion, Mr. Peters would state and show unto the Court that he is a prevailing party in this § 1983 suit, having been dismissed with prejudice in accordance with the Court's Order, DE 301. Mr. Peters would state and show unto the Court that substantial attorneys' fees and costs have been incurred defending the frivolous, unreasonable, and groundless claims against him.

This suit, as it relates to Defendant Peters, was groundless from the very beginning. Even if there were ever a basis for the suit, it became very clear quickly in the litigation that there were no facts to support Plaintiffs' claims against Mr. Peters. Both Plaintiffs suing him testified as such. Excerpts of the deposition of B.P. are attached hereto as Exhibit 1; and excerpts of the deposition of H.A. are attached hereto as Exhibit 2.

Likewise, Plaintiffs' Initial Rule 26 disclosures (attached hereto as Exhibit 3) and the sole supplement in April 2024 (attached hereto as Exhibit 4), failed to include the first mention of substantive evidence against Defendant Peters or any evidence in support of the Plaintiffs' claims against him, whatsoever. Whatever basis Plaintiffs claim to have had to pursue the suit against any other parties, Plaintiffs definitely never had a basis to sue Kevin Peters. *Fox v. Vice*, 563 U.S. 826 (2011).

Further, although Plaintiffs' counsel stated early in the case that one of their amendments to the suit would dismiss the § 1983 claims against Defendant Peters (see email attached as Exhibit 5), Plaintiffs' counsel's representation proved false, and Plaintiff continued to pursue the groundless claims.

In addition, Plaintiffs had every opportunity to dismiss the case against Defendant Peters, and were specifically asked to do so, in writing, on May 24, 2024, immediately following the depositions of Plaintiffs B.P. and H.A (correspondence attached as Exhibit 6). Plaintiffs ignored the letter, and instead, Plaintiffs elected to continue the groundless case.

The Supreme Court, and the Sixth Circuit, have approved an award of prevailing party attorneys' fees where Plaintiffs continued to pursue a case after it became clear that it was "frivolous, unreasonable, or groundless," even if the suit was originally brought in good faith. The Supreme Court has also confirmed that a defendant is entitled to a prevailing party attorneys' fee award with respect to a frivolous claim, even if there are other non-frivolous claims in the same case. *Fox v. Vice*, 563 U.S. 826 (2011).

Filed in support of this Motion is a Memorandum of Law.

Pursuant to Fed. R. Civ. P. 54(d)(2)(B)(ii), the judgment is the order of this Court dismissing the case against this Defendant, DE 301, entered on August 21, 2024, and the authority

for the award is 42 U.S.C. § 1988(b). Pursuant to Fed. R. Civ. P. 54(d)(2)(B)(iii), a fair estimate of the amount sought is \$175,000.00.

This Defendant also filed a bill of costs (DE 320), pursuant to Fed. R. Civ. P. 54(d)(1) and E.D.Tenn. LR 54.1, and requests that these costs also be assessed to Plaintiffs.

WHEREFORE, premises considered, Kevin Peters moves the Court to assess attorneys' fees and costs against Plaintiff B.P. and Plaintiff H.A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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This the 12th day of September, 2024.

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